

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 426

Introduced by Assembly Member Bonnie Lowenthal

February 14, 2011

An act to amend Section 640 of the Penal Code, and to amend Section 99580 of the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 426, as amended, Bonnie Lowenthal. Transit fare evasion.

Existing law authorizes certain transit operators to adopt and enforce an ordinance to impose and enforce civil administrative penalties for fare evasion or passenger misconduct, other than by minors, on or in a transit facility or vehicle in lieu of the criminal penalties otherwise applicable, with specified administrative adjudication procedures for the imposition and enforcement of the administrative penalties, including an initial review and opportunity for a subsequent administrative hearing.

This bill would *authorize the Southern California Regional Rail Authority to adopt and enforce such an ordinance. The bill would provide that a person cited under the ordinance these ordinances adopted by transit operators* shall be afforded an opportunity to complete the administrative process under the circumstances set forth in the ordinance.

Existing law requires fare evasion and passenger misconduct violation penalties to be deposited in the general fund of the county in which the violation occurred.

This bill, with respect to penalties collected by the Los Angeles County Metropolitan Transportation Authority *or the Southern California Regional Rail Authority*, would instead require the penalties

to be deposited in the *respective* general ~~fund~~ *funds* of the ~~authority~~ *authorities*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 640 of the Penal Code is amended to
2 read:

3 640. (a) (1) Any of the acts described in paragraphs (1) to (5),
4 inclusive, of subdivision (b) is an infraction punishable by a fine
5 not to exceed two hundred fifty dollars (\$250) and by community
6 service for a total time not to exceed 48 hours over a period not to
7 exceed 30 days, during a time other than during the violator's hours
8 of school attendance or employment. Any of the acts described in
9 paragraphs (1) to (3), inclusive, of subdivision (c), upon a first or
10 second violation, is an infraction punishable by a fine not to exceed
11 two hundred fifty dollars (\$250) and by community service for a
12 total time not to exceed 48 hours over a period not to exceed 30
13 days, during a time other than during the violator's hours of school
14 attendance or employment. A third or subsequent violation of any
15 of the acts described in paragraphs (1) to (3), inclusive, of
16 subdivision (c) is a misdemeanor punishable by a fine of not more
17 than four hundred dollars (\$400) or by imprisonment in a county
18 jail for a period of not more than 90 days, or by both that fine and
19 imprisonment. Any of the acts described in subdivision (d) shall
20 be punishable by a fine of not more than four hundred dollars
21 (\$400), by imprisonment in a county jail for a period of not more
22 than 90 days, or by both that fine and imprisonment.

23 (2) This section shall apply only to acts committed on or in a
24 facility or vehicle of a public transportation system.

25 (b) (1) Eating or drinking in or on a system facility or vehicle
26 in areas where those activities are prohibited by that system.

27 (2) Disturbing another person by loud or unreasonable noise.

28 (3) Smoking in or on a system facility or vehicle in areas where
29 those activities are prohibited by that system.

30 (4) Expectorating upon a system facility or vehicle.

31 (5) Skateboarding, roller skating, bicycle riding, roller blading,
32 or operating a motorized scooter or similar device, as defined in
33 Section 407.5 of the Vehicle Code in a system facility, vehicle, or

1 parking structure. This paragraph does not apply to an activity that
2 is necessary for utilization of the transit facility by a bicyclist,
3 including, but not limited to, an activity that is necessary for
4 parking a bicycle or transporting a bicycle aboard a transit vehicle,
5 if that activity is conducted with the permission of the transit
6 agency in a manner that does not interfere with the safety of the
7 bicyclist or other patrons of the transit facility.

8 (c) (1) Evasion of the payment of a fare of the system. For
9 purposes of this section, fare evasion includes entering an enclosed
10 area of a public transit facility beyond posted signs prohibiting
11 entrance without obtaining valid fare, in addition to entering a
12 transit vehicle without valid fare.

13 (2) Misuse of a transfer, pass, ticket, or token with the intent to
14 evade the payment of a fare.

15 (3) (A) Unauthorized use of a discount ticket or failure to
16 present, upon request from a transit system representative,
17 acceptable proof of eligibility to use a discount ticket, in
18 accordance with Section 99155 of the Public Utilities Code and
19 posted system identification policies when entering or exiting a
20 transit station or vehicle. Acceptable proof of eligibility must be
21 clearly defined in the posting.

22 (B) In the event that an eligible discount ticket user is not in
23 possession of acceptable proof at the time of request, any citation
24 issued shall be held for a period of 72 hours to allow the user to
25 produce acceptable proof. If the proof is provided, the citation
26 shall be voided. If the proof is not produced within that time period,
27 the citation shall be processed.

28 (d) (1) Willfully disturbing others on or in a system facility or
29 vehicle by engaging in boisterous or unruly behavior.

30 (2) Carrying an explosive, acid, or flammable liquid in a public
31 transit facility or vehicle.

32 (3) Urinating or defecating in a system facility or vehicle, except
33 in a lavatory. However, this paragraph shall not apply to a person
34 who cannot comply with this paragraph as a result of a disability,
35 age, or a medical condition.

36 (4) Willfully blocking the free movement of another person in
37 a system facility or vehicle. This paragraph shall not be interpreted
38 to affect any lawful activities permitted or First Amendment rights
39 protected under the laws of this state or applicable federal law,

1 including, but not limited to, laws related to collective bargaining,
2 labor relations, or labor disputes.

3 (5) Willfully tampering with, removing, displacing, injuring,
4 or destroying any part of any facility or vehicle of a public
5 transportation system.

6 (e) (1) Notwithstanding subdivision (a), the City and County
7 of San Francisco, ~~the Los Angeles County Metropolitan~~
8 ~~Transportation Authority~~, the Santa Clara Valley Transportation
9 Authority, the Sacramento Regional Transit District, Long Beach
10 Transit, Foothill Transit, and the Alameda-Contra Costa Transit
11 District may enact and enforce an ordinance providing that a person
12 who is the subject of a citation for any of the acts described in
13 subdivision (b) or (c) on or in a facility or vehicle described in
14 subdivision (a) for which the City and County of San Francisco,
15 ~~the Los Angeles County Metropolitan Transportation Authority~~,
16 the Santa Clara Valley Transportation Authority, the Sacramento
17 Regional Transit District, Long Beach Transit, Foothill Transit,
18 or the Alameda-Contra Costa Transit District has jurisdiction shall
19 under the circumstances set forth by the ordinance be afforded an
20 opportunity to complete an administrative process that imposes
21 only an administrative penalty enforced in a civil proceeding. The
22 ordinance for imposing and enforcing the administrative penalty
23 shall be governed by Chapter 8 (commencing with Section 99580)
24 of Part 11 of Division 10 of the Public Utilities Code and shall not
25 apply to minors.

26 (2) *Notwithstanding subdivision (a), the Los Angeles County*
27 *Metropolitan Transportation Authority and the Southern California*
28 *Regional Rail Authority may enact and enforce an ordinance*
29 *providing that a person who is subject to a citation for any of the*
30 *acts described in subdivision (b) or (c) on or in a facility or vehicle*
31 *described in subdivision (a) over which the Los Angeles*
32 *Metropolitan Transportation Authority or the Southern California*
33 *Regional Rail Authority has jurisdiction may, under the*
34 *circumstances set forth by the ordinance, be offered an opportunity*
35 *to resolve the citation by completing an administrative process*
36 *that imposes only an administrative penalty enforced in a civil*
37 *proceeding. The ordinance for imposing and enforcing the*
38 *administrative penalty shall be governed by Chapter 8*
39 *(commencing with Section 99580) of Part 11 of Division 10 of the*
40 *Public Utilities Code and shall not apply to minors.*

(f) For purposes of this section, a “facility or vehicle of a public transportation system” means any of the following:

(1) A facility or vehicle of a public transportation system as defined by Section 99211 of the Public Utilities Code.

(2) A facility of, or vehicle operated by any entity subsidized by, the Department of Transportation.

(3) *A facility or vehicle of the Southern California Regional Rail Authority, whether owned or leased.*

~~(3)~~

(4) A leased or rented facility or vehicle for which any of the entities described in paragraph ~~(1)~~ or ~~(2)~~ (1), (2), or (3) incurs costs of cleanup, repair, or replacement as a result of any of those acts.

SEC. 2. Section 99580 of the Public Utilities Code is amended to read:

99580. (a) (1) Pursuant to subdivision (c) of Section 640 of the Penal Code, the City and County of San Francisco, ~~the Los Angeles County Metropolitan Transportation Authority~~, the Santa Clara Valley Transportation Authority, the Sacramento Regional Transit District, Long Beach Transit, Foothill Transit, and the Alameda-Contra Costa Transit District may enact and enforce an ordinance to impose and enforce an administrative penalty for any of the acts described in subdivision (b). The ordinance shall include the provisions of this chapter and shall not apply to minors.

(2) *Pursuant to paragraph (2) of subdivision (e) of Section 640 of the Penal Code, the Los Angeles County Metropolitan Transportation Authority and the Southern California Regional Rail Authority may enact and enforce an ordinance to impose and enforce an administrative penalty for any of the acts described in subdivision (b). The ordinance shall include the provisions of this chapter and shall not apply to minors.*

(b) (1) Evasion of the payment of a fare of the system.

(2) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.

(3) Playing sound equipment on or in a system facility or vehicle.

(4) Smoking, eating, or drinking in or on a system facility or vehicle in those areas where those activities are prohibited by that system.

(5) Expectorating upon a system facility or vehicle.

1 (6) Willfully disturbing others on or in a system facility or
2 vehicle by engaging in boisterous or unruly behavior.

3 (7) Carrying an explosive or acid, flammable liquid, or toxic or
4 hazardous material in a system facility or vehicle.

5 (8) Urinating or defecating in a system facility or vehicle, except
6 in a lavatory. However, this paragraph shall not apply to a person
7 who cannot comply with this paragraph as a result of a disability,
8 age, or a medical condition.

9 (9) (A) Willfully blocking the free movement of another person
10 in a system facility or vehicle.

11 (B) This paragraph shall not be interpreted to affect any lawful
12 activities permitted or first amendment rights protected under the
13 laws of this state or applicable federal law, including, but not
14 limited to, laws related to collective bargaining, labor relations,
15 or labor disputes.

16 (10) Skateboarding, roller skating, bicycle riding, or roller
17 blading in a system facility, including a parking structure, or in a
18 system vehicle. This paragraph does not apply to an activity that
19 is necessary for utilization of a system facility by a bicyclist,
20 including, but not limited to, an activity that is necessary for
21 parking a bicycle or transporting a bicycle aboard a system vehicle,
22 if that activity is conducted with the permission of the agency of
23 the system in a manner that does not interfere with the safety of
24 the bicyclist or other patrons of the system facility.

25 (11) (A) Unauthorized use of a discount ticket or failure to
26 present, upon request from a system representative, acceptable
27 proof of eligibility to use a discount ticket, in accordance with
28 Section 99155, and posted system identification policies when
29 entering or exiting a system station or vehicle. Acceptable proof
30 of eligibility must be clearly defined in the posting.

31 (B) In the event that an eligible discount ticket user is not in
32 possession of acceptable proof at the time of request, an issued
33 notice of fare evasion or passenger conduct violation shall be held
34 for a period of 72 hours to allow the user to produce acceptable
35 proof. If the proof is provided, that notice shall be voided. If the
36 proof is not produced within that time period, that notice shall be
37 processed.

38 (c) (1) The City and County of San Francisco, the Los Angeles
39 County Metropolitan Transportation Authority, the Santa Clara
40 Valley Transportation Authority, the Sacramento Regional Transit

1 District, *the Southern California Regional Rail Authority*, Long
2 Beach Transit, Foothill Transit, and the Alameda-Contra Costa
3 Transit District may contract with a private vendor *or governmental*
4 *agency* for the processing of notices of fare evasion or passenger
5 conduct violation, and notices of delinquent fare evasion or
6 passenger conduct violation pursuant to Section 99581.

7 (2) For the purpose of this chapter, “processing agency” means
8 either of the following:

9 (A) The agency issuing the notice of fare evasion or passenger
10 conduct violation and the notice of delinquent fare evasion or
11 passenger conduct violation.

12 (B) The party responsible for processing the notice of fare
13 evasion or passenger conduct violation and the notice of delinquent
14 violation, if a contract is entered into pursuant to paragraph (1).

15 (3) For the purpose of this chapter, “fare evasion or passenger
16 conduct violation penalty” includes, but is not limited to, a late
17 payment penalty, administrative fee, fine, assessment, and costs
18 of collection as provided for in the ordinance.

19 (4) All fare evasion and passenger conduct violation penalties
20 collected by the processing agency in the City and County of San
21 Francisco shall be deposited to the general fund of the City and
22 County of San Francisco.

23 (5) All fare evasion and passenger conduct violation penalties
24 collected by the Long Beach Transit or Foothill Transit shall be
25 deposited in the general fund of the County of Los Angeles.

26 (6) All fare evasion and passenger conduct violation penalties
27 collected by the Los Angeles County Metropolitan Transportation
28 Authority shall be deposited in the general fund of the authority.

29 (7) All fare evasion and passenger conduct violation penalties
30 collected by the Santa Clara Valley Transportation Authority shall
31 be deposited in the general fund of the County of Santa Clara.

32 (8) All fare evasion and passenger conduct violation penalties
33 collected by the Sacramento Regional Transit District shall be
34 deposited in the general fund of the County of Sacramento.

35 (9) All fare evasion and passenger conduct violation penalties
36 collected by the Alameda-Contra Costa Transit District shall be
37 deposited in the general fund of the county in which the citation
38 is administered.

1 (10) *All fare evasion and passenger conduct violation penalties*
2 *collected by the Southern California Regional Rail Authority shall*
3 *be deposited in the general fund of the authority.*

4 (d) (1) If a fare evasion or passenger conduct violation is
5 observed by a person authorized to enforce the ordinance, a notice
6 of fare evasion or passenger conduct violation shall be issued. The
7 notice shall set forth the violation, including reference to the
8 ordinance setting forth the administrative penalty, the date of the
9 violation, the approximate time, and the location where the
10 violation occurred. The notice shall include a printed statement
11 indicating the date payment is required to be made, and the
12 procedure for contesting the notice. The notice shall be served by
13 personal service upon the violator. The notice, or copy of the
14 notice, shall be considered a record kept in the ordinary course of
15 business of the issuing agency and the processing agency, and
16 shall be prima facie evidence of the facts contained in the notice
17 establishing a rebuttable presumption affecting the burden of
18 producing evidence.

19 (2) When a notice of fare evasion or passenger conduct violation
20 has been served, the person issuing the notice shall file the notice
21 with the processing agency.

22 (3) If a person contests a notice of fare evasion or passenger
23 conduct violation, the issuing agency shall proceed in accordance
24 with Section 99581.

25 (e) In setting the amounts of administrative penalties for the
26 violations listed in subdivision (b), the City and County of San
27 Francisco, the Los Angeles County Metropolitan Transportation
28 Authority, the Santa Clara Valley Transportation Authority, the
29 Sacramento Regional Transit District, *the Southern California*
30 *Regional Rail Authority*, Long Beach Transit, Foothill Transit, and
31 the Alameda-Contra Costa Transit District shall not establish
32 penalty amounts that exceed the maximum fine amount set forth
33 in Section 640 of the Penal Code.

34 (f) A person who receives a notice of fare evasion or passenger
35 conduct violation pursuant to this section shall not be subject to
36 citation for a violation of Section 640 of the Penal Code.

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